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1 it was because of funding, then that's the answer,
 2 but if there was some other reason, I'd like to
 3 know that as well. And if there isn't, that's fine,
 4 too.
 5 A. Well, once you have funding, I like to get the job
 6 started and that was -- our intent was to move
 7 forward.
 8 (EXHIBIT 21 MARKED FOR IDENTIFICATION)
 9 Q. Mr. Owen, the court reporter has marked a 14-page
 10 document as Exhibit 21 and the document is titled,
 11 "Gannett Fleming Engineers and Architects, P.C.," and
 12 then contact information, and then the title,
 13 "Agreement for Architectural Design Services."
 14 A. Yes.
 15 Q. And I'd like to ask you if you're familiar with that
 16 document?
 17 A. (Witness perusing document) Yes, I am.
 18 Q. How are you familiar with it?
 19 A. Well, it's the contract between the Town and Gannett
 20 Fleming.
 21 Q. On the first page, near the top, there are the
 22 handwritten initials WBO, do you see those?
 23 A. Yes.
 24 Q. Are those your initials?

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1 A. Yes, it is.
 2 Q. Did you write that?
 3 A. Yes.
 4 Q. And that's indicating that the date of the agreement
 5 actually occurred in March, not February; is that
 6 correct?
 7 A. That's correct.
 8 Q. Did you -- well, strike that. The first page of
 9 this document apparently bears the signature of
 10 Robert L. Whritenour, Jr., Town Administrator, do you
 11 see that?
 12 A. Yes.
 13 Q. Is it your understanding that this document was in
 14 fact signed by Mr. Whritenour?
 15 A. Yes.
 16 Q. Did you have any participation in preparing this
 17 document? Let me state that again. Did you in any
 18 way participate in preparing this document?
 19 A. No.
 20 Q. Did you review this document?
 21 A. I reviewed it.
 22 Q. Did you review it before Mr. Whritenour put his
 23 signature to it?
 24 A. Yes.

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1 Q. And what was the purpose of your review?
 2 A. To see if it complied with our request for services.
 3 Q. And what was the result of that review?
 4 A. They met what we were looking for and I recommended
 5 Mr. Whritenour to sign it.
 6 Q. Was there any particular part of the agreement that
 7 you reviewed? Did you focus your review on anything
 8 in particular, or did you review the entire document?
 9 A. No. I reviewed the entire document, particularly the
 10 cost.
 11 Q. And did you suggest any changes to the document?
 12 A. No, I did not.
 13 Q. And after you reviewed it --
 14 A. Other than the date that was mentioned earlier, which
 15 I made.
 16 Q. And you indicated that your review, the conclusion of
 17 your review was that the document reflected the
 18 Town's understanding about how the project should
 19 proceed; is that accurate?
 20 A. Yes.
 21 Q. I'd like to ask you to turn to page S-1 of this
 22 document.
 23 THE WITNESS: Page?
 24 MR. RUSSELL: S-1.

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1 THE WITNESS: Frank?
 2 MR. RUSSELL: Sam.
 3 A. Okay.
 4 Q. That page starts with Scope of Services?
 5 A. Yes.
 6 Q. And identifies Task 1, Review of Existing
 7 Information?
 8 A. Yes.
 9 Q. And I'm going to go over this with you. This Task 1,
 10 I'll read sentence by sentence. The first sentence
 11 reads, "Review existing preliminary plans prepared
 12 for the Falmouth DPW in 1994 to understand the DPW's
 13 intent regarding the objectives of the project." My
 14 question about that sentence is the preliminary plans
 15 that this sentence refers to. Do those refer to
 16 Mr. Greenberg's plans that we've identified in this
 17 deposition?
 18 A. Yes.
 19 Q. Do they refer to any other plans?
 20 A. I'm not sure if they referred to our existing plans
 21 of the facility or not.
 22 Q. Well, would those have been prepared in 1994?
 23 A. Yes.
 24 Q. The facility plans would have been prepared in 1994?

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- 1 A. No, they were prepared in '67.
- 2 Q. So, the 1994 plans most likely refer strictly to
- 3 Mr. Greenberg's plans?
- 4 A. I would say yes.
- 5 Q. And the next sentence says, "Meet with DPW staff to
- 6 determine current needs of the facility."
- 7 A. Yes.
- 8 Q. The third sentence says, "Evaluate the preliminary
- 9 design to determine if the existing preliminary plans
- 10 meet the current needs of the DPW and prepare
- 11 recommended modifications to the preliminary plans."
- 12 A. Yes.
- 13 Q. And the concluding words of that sentence, "The
- 14 preliminary plans," do those refer to the same
- 15 preliminary plans identified in the first sentence?
- 16 A. Yes.
- 17 Q. The next sentence says, "Prepare an initial
- 18 construction cost estimate of the proposed work,
- 19 including recommended modifications." Do those
- 20 recommended modifications refer to the plans that are
- 21 identified in the first sentence?
- 22 MR. BARKER: Objection.
- 23 A. The modifications would refer to Gannett Fleming's
- 24 proposed work.

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- 1 Q. Let's go back to the sentence before that, "Evaluate
- 2 the preliminary design to determine if the existing
- 3 preliminary plans meet the current needs of the DPW
- 4 and prepare recommended modifications to the
- 5 preliminary plans." And you've indicated that those
- 6 preliminary plans are Mr. Greenberg's plans; is that
- 7 correct?
- 8 A. They're Mr. Greenberg's plans.
- 9 Q. And the next sentence uses the same words,
- 10 "recommended modifications," the last two words of
- 11 the next sentence are, "recommended modifications,"
- 12 do you see that?
- 13 A. Yes.
- 14 Q. So, that entire sentence reads, "Prepare an initial
- 15 construction cost estimate of the proposed work,
- 16 including recommended modifications." Is it your
- 17 understanding that recommended modifications refers
- 18 to something different than the modifications
- 19 identified in the preceding sentence?
- 20 MR. BARKER: Objection.
- 21 A. No. The modifications in the two sentences are the
- 22 same. The modifications would be to Mr. Greenberg's
- 23 plans, the modifications made by Gannett Fleming.
- 24 Q. I understand. "Review the recommended modifications

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- 1 to the preliminary plans and the initial construction
- 2 cost estimate with the DPW for compatibility with the
- 3 DPW needs and objectives." The next sentence,
- 4 "Obtain DPW concurrence with the recommended changes
- 5 to the preliminary plan." And again, we're talking
- 6 about recommended changes to Mr. Greenberg's plans;
- 7 is that correct?
- 8 A. Correct.
- 9 Q. The last sentence says, "Modify the preliminary plan
- 10 to incorporate the modifications accepted by the
- 11 DPW." And in that sentence we're talking about
- 12 modifying Mr. Greenberg's preliminary plans; is that
- 13 correct?
- 14 A. Correct.
- 15 Q. I'd like to go to Task 3, "Design Specifications and
- 16 Cost Estimates," item 3.1, are you with me?
- 17 A. Yes.
- 18 Q. "Prepare plans, specifications, and cost estimates
- 19 for the following elements of the project," then
- 20 there's a bullet. "Design of a 29,000 plus or minus
- 21 square foot pre-engineered metal building structure
- 22 with a concrete knee wall up to 4 feet high around
- 23 perimeter of building." Will you agree with me that
- 24 Mr. Greenberg's plans included design of a 29,000

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- 1 plus or minus square foot metal building structure
- 2 with a concrete knee wall up to 4 feet high around
- 3 the perimeter of the building?
- 4 MR. BARKER: Objection.
- 5 A. I won't agree that Mr. Greenberg's indicated a
- 6 pre-engineered metal building.
- 7 Q. Will you agree with the remainder of that? And I'll
- 8 restate it. That his plans reflect a 29,000 plus or
- 9 minus square foot structure with a concrete knee wall
- 10 up to 4 feet high around the perimeter of the
- 11 building?
- 12 MR. BARKER: Objection.
- 13 A. Square footage is approximate.
- 14 Q. And that's what we went over earlier when we did the
- 15 25,500 square feet and the 3,700 square feet; is that
- 16 your understanding?
- 17 A. That's correct.
- 18 Q. The next bullet, "Design of a new 3,000 plus or
- 19 minus square foot addition to the existing building
- 20 for offices, a lunch room, administration area toilet
- 21 facilities, and reception area." I'm going to ask
- 22 you about that. What I would like to ask you about
- 23 that is, when this document was signed by
- 24 Mr. Whritenour, was it the Town's understanding that

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1 3,000 square feet would be sufficient to meet its
 2 space needs for these items for offices, for a lunch
 3 room, and administration area toilet facilities, and
 4 a reception area?
 5 A. I won't say the square footage is exact. I believe
 6 the square footages came from previous documents of
 7 Mr. Greenberg's; and that's the best available
 8 information we had at the time.
 9 Q. So, that item came from a review, or resulted from a
 10 review of Mr. Greenberg's plans?
 11 A. The square footage did.
 12 Q. The square footage?
 13 A. That's the best information we had available because
 14 we had no new design.
 15 Q. However, your purpose in reviewing the document was
 16 to make certain that the Town's objectives in the
 17 project would be satisfied; is that correct?
 18 A. Correct.
 19 Q. And your conclusion was that the Town's objectives
 20 would be satisfied with a 3,000 plus or minus square
 21 foot addition for office and related spaces?
 22 MR. BARKER: Objection.
 23 A. I don't agree that 3,000 square feet was a cast in
 24 concrete square foot figure at this point.

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1 expensive. So, we decided to leave that existing
 2 building that's crosshatched in Mr. Greenberg's plans
 3 and not touch it.
 4 Q. My question was, did Mr. Greenberg's plans reflect
 5 all of these items, offices, lunch room,
 6 administration area toilet facilities, and reception
 7 area?
 8 A. They reflected some.
 9 Q. Well, you indicated that there was a reception area,
 10 and that changed. You indicated that there was a
 11 lunch room, and that changed. Were there offices
 12 reflected in these plans?
 13 A. The basic four offices were in the plan. We added
 14 conference rooms in the Gannett Fleming plan, which
 15 were not in Mr. Greenberg's plan.
 16 Q. You added those to his plans?
 17 MR. BARKER: Objection.
 18 A. Pardon?
 19 Q. You added those to his plans? You said you added the
 20 things that weren't in his plans?
 21 A. Yes.
 22 Q. You added them to his plans?
 23 MR. BARKER: Objection.
 24 MR. SKRIP: Objection.

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1 Q. Well, it says plus or minus?
 2 A. It could be plus or minus 2 or 3,000 square feet,
 3 too.
 4 Q. And you didn't point that out to anybody after you
 5 reviewed this document to make sure that it was
 6 consistent with the Town's objectives?
 7 MR. BARKER: Objection.
 8 MR. RUSSELL: You can answer.
 9 A. I didn't point it out, no.
 10 Q. And Mr. Greenberg's plans included all of these items
 11 in this bullet point, offices, a lunch room,
 12 administration area toilet facilities, and reception
 13 area?
 14 THE WITNESS: Did his plans include these
 15 items?
 16 MR. RUSSELL: Yes.
 17 A. To a certain extent they did, but they were changed
 18 when we got into actual design. He mentions lunch
 19 room; we ended up with two lunch rooms. The
 20 reception area changed immensely. The toilet
 21 facilities changed. The existing building that was
 22 going to be demolished, we decided not to demolish,
 23 because if you did, it kicks in the earthquake code
 24 for existing buildings which is very, very

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1 A. They were added in the final design.
 2 Q. But the starting design was his design; is that
 3 correct?
 4 MR. BARKER: Objection.
 5 A. No, I wouldn't say that. The final design was
 6 Gannett Fleming's design.
 7 Q. Well, the original design was his design, I said.
 8 A. The original preliminary plan was Mr. Greenberg's.
 9 Q. And that's what we've been referring to in this Scope
 10 of Services in this document?
 11 A. Because that was the best available information.
 12 Q. I didn't ask you why. I just asked you what it was.
 13 MR. SKRIP: There's no question pending,
 14 Bill. Don't answer a question that's not being
 15 asked.
 16 Q. Page S-3, do you have that?
 17 A. Uh-huh.
 18 Q. At the top, "Administration Building Addition," do
 19 you see that?
 20 A. Yes.
 21 Q. The first bullet point, "Selective demolition of the
 22 existing building at the main entrance." Is that
 23 what you were just talking about?
 24 A. Yes.

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- 1 Q. Mr. Greenberg's plans indicated that that should be
2 demolished?
- 3 A. Yes.
- 4 Q. And that was the remaining plan in this Scope of
5 Services and -- yes, in this Scope of Services?
- 6 MR. BARKER: What was the question?
- 7 MR. RUSSELL: Can you read that back?
- 8 (PENDING QUESTION READ BACK)
- 9 Q. Strike that. This selective demolition, you
10 indicated that ultimately you elected not to
11 proceed with the demolition because of the earthquake
12 code?
- 13 A. Yes.
- 14 Q. Do you have a better description of the earthquake
15 code? Is it title something, or section something,
16 or chapter something?
- 17 A. No, I don't. It's part of the State Building Code,
18 that's all I know.
- 19 Q. When was it decided -- well, as of the date of this
20 document, March 2002, it was still the intent to
21 demolish that part of the existing structure?
- 22 A. Yes.
- 23 Q. When did that intent change?
- 24 A. I think as more information became available from

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- 1 building renovations shall consist of the following
2 elements," am I misreading that?
- 3 A. No.
- 4 Q. So, the first bullet point, "Provide new
5 locker/shower/toilet facilities," new
6 locker/shower/toilet facilities will be included in
7 existing building; is that accurate?
- 8 A. I would say.
- 9 Q. Do you recall that Mr. Greenberg's plans included
10 new locker/shower/toilet facilities in the existing
11 building?
- 12 A. Yes.
- 13 (EXHIBITS 22 AND 23 MARKED FOR IDENTIFICATION)
- 14 Q. Mr. Owen, I'm going to hand you two documents that
15 have been marked as Deposition Exhibits 22 and 23 and
16 I have two questions about these collective
17 documents, or one question about these collective
18 documents, which would be 21, 22, and 23, and then
19 one question about Document Number 22. One of the
20 reasons you were asked to come to this deposition, in
21 representation of the Town, was to indicate the
22 contractual relationship between the Town and Gannett
23 Fleming. And my question is, do those three
24 documents, Exhibits 21, 22, and 23, represent the

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- 1 Gannett Fleming on what to do with that part of the
2 building.
- 3 Q. The third bullet point, "The design will be based on
4 an addition that is structurally isolated from the
5 existing building such that no part of the structural
6 system of the existing building is modified as a
7 result of the new construction." Do you know where
8 that language -- or the purpose behind that language?
- 9 A. I think at that time Gannett Fleming did not want to
10 attach either the front or the rear addition to the
11 existing building.
- 12 Q. Was that part of the earthquake code?
- 13 A. It could be, but I was not aware of the earthquake
14 code at this point.
- 15 Q. The next area that's identified for services to
16 be performed are building renovations, do you see
17 that?
- 18 A. Yes.
- 19 Q. The first bullet point, "Provide new
20 locker/shower/toilet facilities," and these
21 facilities would be in the existing building; is that
22 accurate?
- 23 A. No. They were to be in the new addition.
- 24 Q. It says, "Building renovations: The proposed

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- 1 contractual undertaking, to your knowledge? I
2 understand you're not a lawyer, but the contractual
3 undertaking between the Town and Gannett Fleming?
- 4 A. (Witness perusing document) Yes.
- 5 Q. Is there any additional written contractual terms
6 that are not included in those three exhibits, to
7 your knowledge?
- 8 MR. BARKER: Objection.
- 9 A. No.
- 10 Q. Are there any other contract terms at all between the
11 Town and Gannett Fleming that are not reflected in
12 those documents?
- 13 MR. BARKER: Objection.
- 14 A. Not at this date.
- 15 Q. And the only reason I ask is I want to make sure I
16 have all the documents. It's not a trick question
17 about, you know, whether they're contracts or not. I
18 just want to know if there are any other documents
19 that exist that define the scope of the undertaking
20 and your understand is there aren't?
- 21 A. To date.
- 22 Q. Are you anticipating additional contractual terms?
- 23 A. Possibly.
- 24 Q. And what would those be?

WILLIAM OWEN

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- 1 A. Good question. I don't know what they'd be at this
2 point. There could be.
3 Q. You don't anticipate any at this time?
4 A. Not at this time.
5 Q. Mr. Owen, you just kind of perused them, you're
6 welcome to look at them as carefully as you'd like.
7 I don't want anybody to feel rushed, or you to do
8 anything other than what's going to allow you to be
9 satisfied with your answers. Number 22, I do have a
10 question about Number 22. There is a line in the
11 second paragraph that I would just like to indicate
12 to you, and I'll read it into the record, and then
13 I'll ask you about it. It would be on the first page
14 and it begins with, "These additional design
15 services," do you see that?
16 A. Yes.
17 Q. I'm going to read that into the record, "These
18 additional design services are associated with the
19 significant changes in the project including size,
20 quality, and complexity as originally specified in
21 Task 3 of the Scope of Services to address the Town's
22 program requirements." Do you have an understanding
23 about the increased size of this project as those
24 terms are used in this document?

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- 1 A. That's why we put up a four foot concrete wall. I
2 charged Gannett Fleming to come up with what's called
3 a taper truss design, which is a clear span in the
4 parking garage area.
5 Q. Is this the newly designed area or the existing
6 parking area?
7 A. No. This is the newly designed area.
8 Q. Can you think of anything else in this language
9 discussing significant changes in project including
10 size? Can you think of anything else that the word
11 "size" might be referring to in this document?
12 MR. BARKER: Objection.
13 A. Not offhand, no. There were reconfigurations of the
14 building, the original preliminary plans.
15 Q. I understand that. Wouldn't the original undertaking
16 to draw the design include to draw the design however
17 big it is without extra compensation to the
18 architect?
19 A. This is really not extra compensation.
20 MR. BARKER: Objection.
21 A. This is for the architect to oversee the project as
22 Amendment Number 1.
23 Q. You mentioned, when we looked at the Request for
24 Proposals, I think it's Exhibit 12, there's a

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- 1 A. This is an amendment that came about after the
2 building was designed. So, obviously, it has changed
3 in size and scope. Amendment Number 1 are the
4 construction services cost.
5 Q. You think that that is a -- that size refers to the
6 size of the architect's undertaking, rather than the
7 actual size of the DPW maintenance facility project?
8 A. I think it refers to both.
9 Q. And in what way does it refer to the size of the
10 project?
11 THE WITNESS: By "size," you mean square
12 footage?
13 MR. RUSSELL: Well, I don't know. It's the
14 Town's contract. I'm trying to understand what it
15 means. I know you're not a lawyer and you can talk
16 to your attorney, or Mr. Skrip about this. If you
17 answered it enough, that's fine, too.
18 A. Well, one thing that did change significantly was
19 Greenberg's plans showed a significant amount of
20 columns in the garage parking area. I didn't want
21 any columns because sometimes we don't have very good
22 drivers.
23 Q. I understand. That's the reason for the concrete
24 wall as well?

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- 1 paragraph in there that talks about construction
2 supervision services; is that accurate?
3 A. That's correct.
4 Q. And as you indicated, the architect would expect to
5 supervise the construction once the project was ready
6 to proceed to construction?
7 A. That's correct.
8 Q. And you indicate that that's typically the
9 construction process?
10 A. Yes.
11 Q. Does this document reflect that construction was
12 about to begin and they were being awarded the
13 construction supervision --
14 A. Yes.
15 Q. -- task and not much else than that, for lack of a
16 better question? I mean, I'm trying to understand
17 that that language has any meaning other than we're
18 ready to proceed with construction now. Do you
19 understand it to have any meaning other than we're
20 ready to proceed with construction now?
21 MR. BARKER: Objection.
22 A. That's my understanding.
23 Q. It's just the construction services award?
24 A. It's a construction services contract.

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- 1 Q. And that makes their undertaking bigger. Now, they
2 have to do more than just the design; now, they have
3 to do whatever this contract requires of them, that's
4 a bigger undertaking?
- 5 A. That's correct.
- 6 (EXHIBIT 24 MARKED FOR IDENTIFICATION)
- 7 Q. Mr. Owen, the court reporter has marked the next
8 document as Exhibit Number 24 and it's a handwritten
9 note. I'd like to ask you to review that and let me
10 know if you're familiar with it?
- 11 A. (Witness perusing document) Yes, I am.
- 12 Q. How are you familiar with it?
- 13 A. It's from George C., who is George Calise, the Town
14 Engineer, on the evaluation of the proposal for the
15 project.
- 16 Q. How would this document have come to your attention?
- 17 A. Well, there was a Review Committee and these were
18 George's comments to me.
- 19 Q. Who was involved in the Review Committee?
- 20 A. Well, it was Mr. Calise, myself, I believe the Town
21 Planner, and I think that was it. There was supposed
22 to be a member of the Public Buildings Committee, but
23 they bowed out.
- 24 Q. And you suspect you received this about the date of

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- 1 your review of the contract; is that accurately
2 put?
- 3 A. As part of the fee proposal, yes.
- 4 Q. Did anybody else for the Town review that document
5 before Mr. Whritenour signed it? Exhibit 21, I'm
6 referring to.
- 7 A. No.
- 8 Q. Nobody else reviewed it?
- 9 A. Probably the Town counsel did. I can't recall.
- 10 Q. Mr. Whritenour, did he review it or did he accept
11 your recommendation?
- 12 A. Most likely, he accepted my recommendation.
- 13 (EXHIBIT 25 MARKED FOR IDENTIFICATION)
- 14 Q. I had asked you about the columns that Mr. Greenberg
15 had in his plans and you indicated that you had a
16 suggestion for removing the columns; is that what you
17 said?
- 18 A. For eliminating them.
- 19 Q. Is that different than removing them? That's what
20 your testimony was.
- 21 A. No columns.
- 22 Q. I asked you what your testimony was; so, you know, if
23 that's what it was, I was wrong. And what was the
24 solution to eliminate them?

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- 1 the document, February 4th, it must be, 2002?
- 2 A. Yes.
- 3 Q. Paragraph 2, "Prior to award the 'scope of work'
4 detailed by the consultants should be reviewed as to
5 understanding of requirements." Do you see that?
- 6 A. Uh-huh.
- 7 Q. Is that the review that you discussed previously that
8 you made of the contract?
- 9 A. I think what Mr. Calise is referring to is some of
10 the things we omitted from the contract, such as a
11 septic system.
- 12 Q. Was a septic system added to the contract?
- 13 A. Was it added to Gannett Fleming's contract? Yes.
14 They did design the septic system, a few septic
15 systems. It was excluded from our construction bid,
16 though.
- 17 Q. Is that in any of the contracts that we've looked at,
18 that they were compensated for doing that?
- 19 A. Yes.
- 20 Q. Was that in one of the contracts that we looked at?
- 21 A. I'm sure it was. Mr. Calise is just pointing out
22 that there may not be a need for a new septic system;
23 however, we found out there is.
- 24 Q. So, these comments were helpful to you as part of

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- 1 A. Structurally, the solution was to provide a clear
2 span between walls by means of a tapered steel truss,
3 which is used frequently in bridges and in buildings.
- 4 Q. Is that something that also could work in office
5 space as well as garage space, or is it too
6 unsightly?
- 7 A. To work in any building design.
- 8 Q. There would have to be walls for these to be attached
9 to; is that accurate?
- 10 A. Eventually, yeah, at each end you need some support.
- 11 Q. How far can the support span, do you know?
- 12 A. Design it for what you want.
- 13 Q. Mr. Owen, I've presented you with what the court
14 reporter has marked for identification as Exhibit
15 Number 25 and this is a document on Gannett Fleming
16 stationery dated April 01, 2003 addressed to
17 Mr. William B. Owen, P.E. I'd like to ask you if
18 you're familiar with that document?
- 19 A. (Witness perusing document) Yes.
- 20 Q. Does your signature appear on that document?
- 21 A. Yes.
- 22 Q. Did you discuss this letter with anybody before you
23 signed it?
- 24 A. I can't recall. I don't believe I did.

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- 1 Q. Did you discuss it with anybody at Gannett Fleming
2 before you signed it?
3 A. I don't think I did.
4 Q. Did you discuss it with anybody at the Town before
5 you signed it?
6 A. I can't recall. I may have discussed it with Town
7 counsel.
8 Q. The third paragraph of the letter reads, "Any
9 potential similarities between Gannett Fleming's
10 final design documents and Noah Greenberg Associates'
11 preliminary design documents may be a result of
12 industry standard space programming and design
13 development for a facility of this nature." My
14 question is, before you signed this, or even after
15 you signed this, did you conduct any review to
16 determine whether there were in fact any similarities
17 between Gannett Fleming's final design documents and
18 Noah Greenberg Associates' preliminary design
19 documents?
20 A. I didn't conduct any study. It was my opinion that
21 they were two totally different design documents.
22 Q. Did you take them out and compare them to each
23 other?
24 A. Yes.

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- 1 A. No. I had both sets of plans in my office.
2 Q. Did you review both sets of plans before you signed
3 this?
4 MR. BARKER: Objection.
5 A. I knew what Noah Greenberg submitted. I didn't have
6 to pull the plans out of the file. I knew what they
7 were like.
8 Q. Okay, that's all I wanted to know. And you didn't
9 ask Gannett Fleming if they identified any
10 similarities between the two sets of plans?
11 A. No. I didn't talk to Gannett Fleming about this.
12 (EXHIBIT 26 MARKED FOR IDENTIFICATION)
13 Q. Mr. Owen, I have just presented to you what's been
14 marked as Deposition Exhibit Number 26 and this is a
15 document, it's an unsigned document on the stationery
16 of the Town of Falmouth, Office of Selectmen and
17 Administrator dated April 27, 2004. It's stamped
18 "Draft" and there's an undesignated re: line. It
19 says, "An open letter to the residents of the Town of
20 Falmouth regarding the need for an upgraded DPW
21 facility." And I would ask you are you familiar with
22 that document?
23 A. (Witness perusing document) Yes, I've seen it before.
24 Q. And there's some handwriting on the document, do you

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- 1 Q. When did you do that?
2 A. I can't recall the date. I had been working with
3 this project continuously. I knew what Noah
4 Greenberg submitted and I knew what Gannett Fleming
5 submitted; so, I kind of lived with this project.
6 Q. You still thought it was necessary to review both
7 sets of plans before you signed this?
8 MR. BARKER: Objection.
9 A. The question again.
10 Q. Despite the familiarity that you've just expressed,
11 you still thought it was necessary to take the plans
12 out and review them before signing this letter?
13 MR. BARKER: Objection.
14 A. No, I did not.
15 Q. Well, did you review them -- did you compare them, or
16 not? I don't understand whether you did or you
17 didn't.
18 A. I knew what Noah Greenberg submitted. I had it up
19 here in my head (Gesturing). I knew what Gannett
20 Fleming submitted. I had the plans constantly on my
21 table in my office. I felt the two were not similar;
22 that's why I signed it.
23 Q. You said you had the plans on your desk. Just
24 Gannett Fleming's plans or both sets of plans?

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- 1 recognize that?
2 THE WITNESS: At the right top?
3 MR. RUSSELL: Yes, at the right top.
4 A. That's a comment I made to one of the Selectmen.
5 Q. And?
6 A. The comment was good.
7 Q. To Gary, to the Selectman called Gary?
8 A. Gary Murphy.
9 Q. The fourth paragraph --
10 A. Yes.
11 Q. -- the first sentence begins, "This project has been
12 in the Town's Capital Improvement Program for several
13 years." Is that your understanding?
14 A. Yes.
15 Q. Is that anything more than what you've talked to me
16 about already with respect to, since even before
17 1993, there was a desire to improve this facility and
18 it kind of sputtered along over time? And I don't
19 mean to characterize your words. Was there something
20 more to it than that or was that what was meant by
21 that language?
22 MR. BARKER: Objection.
23 A. No, that's pretty much it.
24 MR. RUSSELL: What was wrong with that

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1 question?

2 MR. BARKER: I think it mischaracterizes

3 his testimony.

4 Q. But that's your understanding of what that language

5 means?

6 A. Yes.

7 Q. When you were asked to review this letter, did you

8 feel that you were capable of reviewing this letter

9 for the purposes of determining the accuracy of that

10 language?

11 A. Yes. I felt I was capable of reviewing it, yes.

12 Q. And you felt that that was accurate?

13 A. Yes.

14 Q. And for the reasons you discussed; it's accurate for

15 the reasons you discussed earlier?

16 MR. BARKER: Objection.

17 MR. RUSSELL: I'm not mischaracterizing

18 anything. I'm saying for the reasons he discussed

19 earlier.

20 MR. BARKER: Objection.

21 Q. Is that your understanding?

22 A. It was time to move forward.

23 Q. What happened with the project between 1994, when you

24 received Mr. Greenberg's plans, and 2001, when the

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1 A. 2004. And I believe in the previous year, it was

2 put to referendum and defeated and this was the year

3 it passed, in the May of '04 election.

4 Q. Did you participate in securing funding for the

5 construction project?

6 A. Did I?

7 Q. Participate in securing funding for the actual

8 construction?

9 A. Well, I participated in the fact of making a

10 presentation at a Town meeting.

11 Q. When did you do that?

12 A. Well, I did it two years, really. I did it in April

13 of '03 and April of '04 at the spring Town meetings.

14 Q. In 1994, after you received Mr. Greenberg's plans and

15 his cost estimate that we don't have a copy of right

16 now, but we think was 2.2 million, what steps did you

17 take personally to see this project advance beyond

18 the preparation of preliminary architectural

19 drawings?

20 A. My involvement was with the Town Administrator, who

21 was my boss, and with the Board of Selectmen. I

22 don't believe it ever went -- it never went to a Town

23 meeting after '94 until '03.

24 Q. What did you do -- did you do anything in 1994 to

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1 Town submitted the Request for Qualifications that's

2 been marked as Exhibit 12, I believe? What happened?

3 A. Well, the project kept getting more attention.

4 Q. It kept getting more attention?

5 A. Yes.

6 Q. Whose attention was it receiving?

7 A. Well, the Town had many projects going on, schools, a

8 fire station, and the schools were two schools alone

9 and I believe there was a library design in there.

10 So, there probably were other projects in the capital

11 expenditures. So, we just kept getting moved back,

12 so that's what happened timewise.

13 Q. Was there anybody at the Town that was responsible

14 for trying to advocate for this project?

15 A. I don't understand the question as to who was

16 responsible.

17 Q. Was there anybody at the Town that took the lead in

18 advocating for this project for completing the

19 renovations?

20 A. Not until that time.

21 Q. What time do you refer to?

22 A. The time that the Selectmen said it was time to move

23 forward.

24 Q. Which we think was -- well, when was that, 2004?

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1 present this issue to other Town officials?

2 A. I can't recall what I did. There were Selectmen's

3 meetings, but I don't know how many, or -- it kept

4 being included in my capital plan, which is a secure

5 capital plan for the DPW. And let's say it's

6 included in '95 and it's not recommended by the

7 Administrator, the Selectmen, or the Finance

8 Committee, it moves up. It kept getting moved up

9 because, as I mentioned earlier of other projects,

10 there's only so much the Town can bond.

11 Q. You recall that you made a presentation at two Town

12 meetings?

13 A. Yes.

14 Q. And you made presentations to the Selectmen?

15 A. Correct.

16 Q. Can you recall roughly how many presentations to the

17 Selectmen that you made?

18 A. I don't recall.

19 Q. Can you tell me if you made presentations annually to

20 the Selectmen?

21 A. I don't believe I did.

22 Q. Can you, with any confidence, identify any year in

23 which you made a presentation to the Selectmen? I

24 understand you're dealing with your memory.